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International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Concluding observations on the combined twenty-second and twenty-third periodic reports of Peru*

1. The Committee considered the combined twenty-second and twenty-third periodic reports of Peru, submitted as a single document (CERD/C/PER/22-23), at its 2620th and 2621st meetings (CERD/C/SR.2620 and CERD/C/SR.2621), held on 25 and 26 April 2018. At its 2634th meeting, held on 4 May 2018, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the combined twenty-second and twenty-third periodic reports of the State party. The Committee wishes to express its satisfaction with the frank and constructive dialogue held with the State party's high-level delegation and appreciates having been provided with additional information after the dialogue.

B. Positive aspects

3. The Committee welcomes the State party's ratification of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in January 2016.

4. The Committee welcomes the legislative and institutional measures adopted by the State party during the period under review, in particular:

(a) The adoption of Legislative Decree No. 1350 on migration, published in January 2017;

(b) The adoption of the 2018–2021 National Human Rights Plan;

(c) The adoption of the 2016–2020 National Development Plan for the Afro-Peruvian population;

(d) The adoption of the National Policy for Mainstreaming the Intercultural Approach;

(e) The adoption of the Sectoral Policy on Intercultural Bilingual Education and the National Plan for Intercultural Bilingual Education: a vision for 2021.

5. The Committee welcomes the fact that the twelfth national census on population, the seventh national census on housing and the third national census on indigenous communities were conducted in 2017 and that, for the first time, the national census on indigenous communities included an ethno-racial variable based on the principle of self-

* Adopted by the Committee at its ninety-fifth session (23 April–11 May 2018).

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identification, thereby providing more complete information on the State party's demographic composition.

C. Concerns and recommendations

Statistical information

6. While acknowledging the introduction of an ethno-racial variable in the latest census, the Committee is concerned that this variable has not yet been systematically introduced in the data-collection systems used by the different public institutions, which limits the potential for generating reliable data and indicators that would help to provide a clear and objective picture of the needs of all ethnic groups in the population. The Committee regrets that it does not have detailed information on the situation of the Roma population in the State party.

7. **The Committee recommends that the State party ensure that public institutions incorporate an ethno-racial variable into their administrative record-keeping and data-collection methods on a systematic basis. It also encourages the State party to follow up on the twelfth national census on population, the seventh national census on housing and the third national census on indigenous communities, conducted in 2017, by carrying out post-census studies and requests it to ensure that its next report contains reliable, updated and comprehensive statistics and socioeconomic and human rights indicators that are disaggregated by race, colour, descent and national or ethnic origin and that these data are then disaggregated by gender, age, region and urban/rural area, including the most remote rural zones. It further requests that the State party include socioeconomic indicators and statistics on its Roma population. In this regard, it draws the State party's attention to the Committee's general recommendation No. 4 (1973) concerning reporting by States parties with regard to the demographic composition of the population.**

Legislative measures

8. The Committee is concerned by the fact that the State party has not yet incorporated a specific definition and an explicit prohibition of racial discrimination in its legislation that includes all the elements contained in article 1 of the Convention (art. 1 (1) and art. 2 (1) (d)).

9. **Based on its earlier recommendations (CERD/C/PER/CO/18-21, paras. 9 and 10), the Committee urges the State party to review its legislation and to incorporate a clear, explicit prohibition of racial discrimination that meets all the requirements established in article 1 (1) of the Convention and that covers acts of direct and indirect discrimination in all fields of law and public life. It also recommends that the State party include a specific prohibition in its criminal legislation of the acts mentioned in article 4 of the Convention.**

Institutional measures

10. The Committee is concerned about the ineffectiveness of the National Commission against Discrimination and the Racism Alert Platform in combating racial discrimination, in part owing to a failure to allocate adequate funding to those mechanisms (art. 2 (1)).

11. **The Committee reiterates its earlier recommendation (CERD/C/PER/CO/18-21, para. 12) and urges the State party to ensure the effectiveness of the work of the National Commission against Discrimination and the Racism Alert Platform in the fight against racial discrimination by, inter alia, allocating sufficient human, technical and financial resources for that purpose and ensuring an adequate degree of cross-sectoral representation.**

Structural discrimination

12. The Committee remains concerned about the persistent structural racial discrimination faced by indigenous peoples and the Afro-Peruvian population, which is

reflected in the difficulties that they have in gaining access to employment, education and quality health services (arts. 2 and 5).

13. **The Committee reiterates its earlier recommendation (CERD/C/PER/CO/18-21, para. 8) and urges the State party to adopt a comprehensive national policy to combat racism and racial discrimination that will promote social inclusion and reduce the high levels of inequality and poverty existing among indigenous peoples and the Afro-Peruvian population. With reference to its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, the Committee urges the State party to adopt special measures or affirmative action measures at all levels of the civil service to eliminate structural discrimination against indigenous peoples and the Afro-Peruvian population.**

Afro-Peruvian population

14. While the Committee welcomes the adoption of the 2016–2020 National Development Plan for the Afro-Peruvian Population, it is concerned that the Plan may not be effectively implemented, in part owing to a failure to allocate adequate resources for that purpose and to insufficient coordination among the institutions responsible for its implementation. Furthermore, the Committee is concerned about the fact that the Afro-Peruvian population lacks visibility and regrets that this population has still not been accorded constitutional recognition (arts. 2 and 5).

15. **In the light of its general recommendation No. 34 (2011) on racial discrimination against people of African descent, the Committee recommends that the State party take the necessary steps to ensure the effective implementation of the 2016–2020 National Development Plan for the Afro-Peruvian Population by, inter alia, allocating adequate human, technical and material resources for that purpose, strengthening the Afro-Peruvian Working Group as the mechanism responsible for its implementation, follow-up and monitoring, and ensuring effective coordination among the different national and regional institutions. In the light of information provided during the dialogue, the Committee encourages the State party to expedite, in consultation with the Afro-Peruvian community and with its participation, congressional approval of the recently submitted bill which would amend the Constitution to accord recognition to the Afro-Peruvian population.**

Indigenous lands, territories and resources

16. The Committee is concerned by the absence of effective mechanisms for the protection of indigenous peoples' rights to their lands, territories and resources. This is, in part, attributable to the lack of proper procedures for the recognition of ownership and for land titling and to the widespread concentration of land and the exploitation of natural resources by private entities, companies and individuals — a situation which continues to provoke serious social conflicts. The Committee is also concerned about the fact that the development of natural resources continues to have a negative impact on the territories, lands and resources of indigenous peoples, particularly in the form of the pollution of water resources, which significantly impinges upon their traditional means of subsistence (art. 5).

17. **The Committee recommends that the State party:**

(a) **Establish an appropriate and effective mechanism for filing land claims and for the restitution of ancestral territories and lands and ensure that adequate human, technical and financial resources are allocated for the proper operation of that mechanism;**

(b) **Ensure the protection of indigenous peoples' right to own, use, develop and exercise full control over their lands, territories and resources by, inter alia, providing the necessary legal recognition and safeguards in line with international standards;**

(c) **Step up its efforts to conduct timely and appropriate social and environmental impact assessments of natural resource development projects sited in**

indigenous peoples' territories with a view to protecting those peoples' traditional means of subsistence;

(d) **Ensure that affected communities receive compensation for any harm suffered and that they have access to a share in the benefits to be derived from such activities.**

Indigenous peoples in voluntary isolation or initial contact

18. The Committee is concerned at the fact that, despite the establishment of indigenous reserves, natural resource development projects continue to threaten the physical and cultural survival of indigenous peoples in voluntary isolation or initial contact, particularly in the cases of the Isconahua, Murunahua, Mashco Piro and Kugapakori, Nahu and Nanti reserves, among others (art. 5).

19. **The Committee urges the State party to:**

(a) **Step up its efforts to expedite the establishment of indigenous reserves;**

(b) **Adopt and implement appropriate measures for ensuring the physical and cultural survival of indigenous peoples who are in voluntary isolation or initial contact, particularly those who have been or are at risk of being negatively affected by natural resource development projects.**

Prior consultation

20. The Committee is concerned at the fact that the right of indigenous peoples to prior consultation with a view to obtaining their free, prior and informed consent is not applied with regard to legislative measures. Furthermore, the Committee remains concerned about the shortcomings of the procedures for prior consultation on natural resource development projects, including mining projects, located in indigenous territories, inasmuch as such consultations are not conducted in a timely fashion and the information provided to the indigenous peoples concerned is not sufficient to enable them to express their free, prior and informed consent (arts. 2 and 5).

21. **In the light of its earlier recommendation (CERD/C/PER/CO/18-21, para. 14), the Committee urges the State party to:**

(a) **Ensure that indigenous peoples and, where appropriate, the Afro-Peruvian population are consulted about all administrative and legislative measures that may affect their rights with a view to obtaining their free, prior and informed consent;**

(b) **Adopt an appropriate methodology for conducting prior consultations with a view to obtaining free, prior and informed consent which takes into account the traditions and cultural characteristics of the peoples concerned;**

(c) **Ensure that prior consultations on the implementation of natural resource development projects, including mining projects, that are to be conducted on indigenous peoples' lands or in their territories are carried out in each and every case and in a systematic, timely and reasonable manner and that the indigenous peoples concerned are provided with sufficient and appropriate information.**

Human rights defenders and leaders of indigenous and Afro-Peruvian peoples

22. The Committee is concerned about the increase in violence directed against human rights defenders, especially leaders of indigenous peoples and Afro-Peruvian communities. In particular, it deeply regrets the recent murder of the indigenous leader Olivia Arévalo of the Shipibo-Conibo peoples in the Ucayali Region and deplores the incidents in which people have reacted to that murder by taking the law into their own hands. Furthermore, the Committee is concerned at the fact that the State party does not yet have a protocol for the protection of human rights defenders, that an independent mechanism for this purpose had not been established and that such establishment is subject to the availability of resources (arts. 2 and 6).

23. **The Committee recommends that the State party:**

(a) **Adopt effective and timely measures to prevent acts of harassment, intimidation, retaliation and violence against human rights defenders, including leaders and defenders of the rights of indigenous peoples and Afro-Peruvians;**

(b) **Establish an independent national mechanism for the protection of human rights defenders and appropriate strategies for their protection, while taking due account of cultural, regional and gender differences, and provide for the allocation of sufficient human, financial and technical resources for the effective operation of that mechanism;**

(c) **Investigate all acts of harassment, intimidation or retaliation and threats against human rights defenders and ensure that the responsible parties are duly punished, particularly in the case of the recent murder of Olivia Arévalo;**

(d) **Take the necessary steps to ensure that the rule of law prevails and prevent people from taking the law into their own hands;**

(e) **Conduct campaigns to provide information and raise awareness about the crucial work performed by human rights defenders, including leaders and defenders of the rights of indigenous peoples and Afro-Peruvians, with a view to fostering a climate of tolerance in which they can carry out their work free of any type of intimidation, threats or retaliation.**

Use of force

24. The Committee remains concerned about allegations of the excessive use of force against members of indigenous peoples who oppose the implementation of extractive projects. It is also concerned about the fact that the impartiality of the Peruvian National Police may be undermined by the conclusion of service delivery agreements with mining companies operating in indigenous territories and that preventive states of emergency are decreed in regions inhabited primarily by indigenous peoples (arts. 2 and 5).

25. **The Committee reiterates its earlier recommendations (CERD/C/PER/CO/18-21, para. 23) and calls upon the State party to:**

(a) **Take steps to prevent the excessive use of force, ill-treatment and abuse of authority in respect of members of indigenous peoples and the Afro-Peruvian community by, inter alia, upholding the principle of proportionality and strict necessity in the recourse to force and conducting training for law enforcement officers on the use of force and the restoration of law and order using conventional mechanisms;**

(b) **Ensure that the Peruvian National Police Force is completely independent and impartial in the performance of its duties and give consideration to the discontinuance of agreements for the delivery of services to private companies, in particular mining companies operating in indigenous territories;**

(c) **Before declaring preventive states of emergency, undertake a thorough analysis of the situation and provide justification for the need for such a state of emergency while ensuring due respect for the principles of non-discrimination and proportionality;**

(d) **Investigate all allegations of excessive use of force, ill-treatment or abuse directed at members of indigenous peoples by law enforcement officials and, where substantiated, ensure that those responsible are prosecuted and punished, taking into account the gravity of their acts.**

Forced sterilization

26. The Committee welcomes the establishment of the Registry of Victims of Forced Sterilization for cases of forced sterilization that occurred between 1995 and 2001 and the news of the reopening of legal proceedings regarding the forced sterilization of indigenous women. However, it is concerned that indigenous women who were victims of forced

sterilization continue to face difficulties in gaining access to justice and to the Registry of Victims of Forced Sterilization (art. 6).

27. **In the light of its earlier recommendation (CERD/C/PER/CO/18-21, para. 22), the Committee urges the State party to take the necessary steps to ensure that victims of forced sterilization have access to the Registry of Victims of Forced Sterilization. It also urges the State party to take the necessary steps to ensure that the investigation of the case concerning these forced sterilizations is carried out without further delay and in a comprehensive manner and to ensure that the responsible parties are duly punished and that the victims have access to adequate reparation.**

Working conditions

28. The Committee is concerned about the absence of official statistics on forced labour and on its impact on indigenous peoples and on various other national or ethnic groups, even though there are reports that members of indigenous peoples in the regions of the Amazon continue to be subjected to forced labour. The Committee is also concerned at the fact that domestic workers, most of whom are women, continue to be victims of discrimination on the basis of their ethnic origin (arts. 2 and 5).

29. **The Committee urges the State party to:**

(a) **Ensure that the Third National Plan to Combat Forced Labour includes specific targets and timelines and allocate the necessary human, technical and material resources for its proper implementation;**

(b) **Strengthen the National Committee against Forced Labour and the labour inspection system;**

(c) **Adopt appropriate measures to prevent forced labour and to investigate and prosecute all cases of forced labour, ensure that victims have access to justice and to the labour inspection system and receive adequate protection and redress and ensure that the responsible parties are duly prosecuted and punished in accordance with the gravity of their crime;**

(d) **Redouble its efforts to provide effective protection to all domestic workers, ensure that the laws and regulations governing domestic work are strictly enforced and ratify the International Labour Organization (ILO) Domestic Workers Convention, 2011 (No. 189);**

(e) **Include statistical information in its next periodic report on the actual extent of forced labour and on its impact on indigenous peoples, the Afro-Peruvian population and other national or ethnic groups.**

Political participation

30. The Committee is concerned by the ineffectiveness of the measures in place for promoting participation by indigenous peoples and members of the Afro-Peruvian community in public decision-making processes (arts. 2 and 5).

31. **The Committee recommends that the State party ensure the participation of the Afro-Peruvian, indigenous and Roma populations at all levels of national and local government offices and agencies, including in senior and decision-making positions, and that the extent of their participation be equal to or greater than the percentages of the total population represented by those communities in the latest census. The Committee also recommends that the State party take steps to heighten the awareness of the members of indigenous peoples and of the Afro-Peruvian community of the importance of being actively involved in public and political life.**

Education

32. The Committee is concerned by the limited extent to which the National Plan for Intercultural Bilingual Education: a vision for 2021 are being implemented, particularly at the secondary school level, owing, in part, to the lack of a sufficient number of qualified teachers and a failure to allocate sufficient resources for that purpose. It is also concerned

about the difficulties that children and adolescents belonging to indigenous peoples and the Afro-Peruvian community face in gaining access to a quality education, particularly in rural and remote areas (arts. 2 and 5).

33. **The Committee recommends that the State party step up its efforts to ensure the proper implementation of the National Plan for Intercultural Bilingual Education a vision for 2021 by, inter alia, allocating sufficient resources for that purpose, strengthening the National Commission on Intercultural Bilingual Education and establishing an effective mechanism for monitoring the Plan's implementation. The Committee urges the State party to promote initial and in-service teacher training as a means of strengthening its intercultural bilingual education system while continuing its efforts to do away with the difficulties that hinder access to an education and its efforts to reduce the dropout and repetition rates for indigenous and Afro-Peruvian children, particularly in rural and remote areas.**

Multiple forms of discrimination against women

34. The Committee is concerned about the multiple forms of discrimination that Afro-Peruvian women and indigenous women continue to face in the State party, which is reflected in their limited access to work, education and health and in their limited opportunities for political participation. The Committee also remains concerned about the high rate of violence against women, which has a disproportionate impact on indigenous and Afro-Peruvian women (arts. 5 and 6).

35. **The Committee reiterates its earlier recommendation and urges the State party to mainstream a gender perspective in all policies and strategies for combating racial discrimination in order to put an end to the multiple, intersectional discrimination faced by indigenous women and Afro-Peruvian women. In addition, it recommends that the State party adopt measures based on an intercultural approach in order to guarantee access for Afro-Peruvian and indigenous women to: (a) education, employment, health and sexual and reproductive health; (b) participation in decision-making processes and particularly in prior consultation processes; and (c) justice and adequate mechanisms for their protection from gender-based violence. The Committee wishes to draw the State party's attention to its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination.**

Situation of migrants

36. While the Committee appreciates the efforts made to accommodate migrants, asylum seekers and refugees, in particular members of the Venezuelan population, by, inter alia, granting temporary residence permits, it is concerned that, in practice, these persons are victims of prejudice, stereotypes and discriminatory acts and have difficulty in gaining access to basic services, especially health services and education (arts. 2 and 5).

37. **Taking into account its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party take the necessary action to ensure the protection of foreign nationals, a majority of whom are Venezuelan. In particular, the Committee urges the State party to:**

(a) **Implement measures designed to promote the full participation and integration of migrants into the State party and respect for their rights;**

(b) **Conduct awareness-raising, information and educational campaigns designed to dispel negative stereotypes of migrants;**

(c) **Remove barriers that, in practice, impede access to health services, education and employment by, inter alia, ensuring the timely issuance of identity documents;**

(d) **Include statistics and socioeconomic indicators on migrants in its next periodic report.**

Access to justice

38. The Committee is concerned by the fact that such a small number of complaints of racial discrimination have been filed. It also notes with concern that, to date, a decision has been handed down in only one such case, that of Azucena Algendones, and that that case is still pending without right of appeal. The Committee is also concerned at the fact that, notwithstanding the adoption of the National Plan of Access to Justice for Persons in Vulnerable Situations of the Judiciary for 2016–2021, Afro-Peruvians and members of indigenous peoples continue to face difficulties in gaining access to justice (art. 6).

39. **The Committee, in the light of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, urges the State party to:**

(a) **Adopt effective measures to ensure that all victims of racial discrimination have easy access to swift and effective legal remedies and compensation;**

(b) **Guarantee access to justice for indigenous peoples and members of the Afro-Peruvian community and ensure that their fundamental rights and due process safeguards are upheld by, inter alia, increasing the number of interpreters and the opportunities for gaining access to free legal assistance;**

(c) **Provide training on a regular basis for police officers, prosecutors, lawyers, public defenders, judges and justice system officials in order to raise their awareness about the negative effects of racial discrimination and to ensure the effective application of the Convention.**

Racial stereotypes

40. The Committee is deeply concerned about the fact that members of indigenous peoples and of the Afro-Peruvian community continue to be victims of racial prejudice held by the media, businesses and even public officials. The Committee regrets that negative stereotypes continue to be propagated by television programmes, through characters such as "La Paisana Jacinta" and "El Negro Mama" (art. 7).

41. **The Committee reiterates its earlier recommendation (CERD/C/PER/CO/18-21, para. 19) and urges the State party to take appropriate steps to prevent the propagation of messages, programmes and advertisements that perpetuate the stigmatization of indigenous peoples and the Afro-Peruvian population through the portrayal of stereotypes. It also urges the State party to conduct extensive campaigns to educate and raise the awareness of the general public about the negative effects of racial discrimination and to promote understanding and tolerance among the various racial and ethnic groups in the country. The Committee draws the State party's attention to its general recommendation No. 35 (2015) on combating racist hate speech.**

D. Other recommendations

Ratification of other treaties

42. **In view of the indivisibility of all human rights, the Committee encourages the State party to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, as well as the 2013 Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, and the 2013 Inter-American Convention Against All Forms of Discrimination and Intolerance.**

Amendment of article 8 of the Convention

43. **The Committee recommends that the State party should ratify the amendment to article 8 (6) of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111.**

Durban Declaration and Programme of Action

44. **In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that, when incorporating the provisions of the Convention into its national legislation, the State party should take into consideration the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the outcome document of the Durban Review Conference, held in April 2009. The Committee requests that the State party should include specific information on this topic in its next periodic report.**

International Decade for People of African Descent

45. **Pursuant to General Assembly resolution 68/237 proclaiming the International Decade for People of African Descent (2015–2024) and its resolution 69/16 on the programme of activities for the Decade, the Committee recommends that the State party prepare and implement an appropriate programme of measures and policies. The Committee also requests the State party to include in its next report detailed information on the specific measures taken in this regard, bearing in mind its general recommendation No. 34 (2011) on racial discrimination against people of African descent.**

Dissemination of reports and concluding observations

46. **The Committee recommends that the State party should make its reports available to the general public as soon as they are submitted, and disseminate these concluding observations in both official languages and in other commonly used languages of the State party.**

Consultation with civil society organizations

47. **The Committee recommends that the State party hold consultations and broaden its dialogue with civil society organizations working to protect human rights, particularly in the area of racial discrimination, in the course of preparations for the next periodic report and the follow-up to the present concluding observations.**

Follow-up to concluding observations

48. **In accordance with article 9 (1) of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of these concluding observations, on its follow-up to the recommendations contained in paragraphs 23 (c), 25 (d) and 27.**

Paragraphs of particular importance

49. **The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 13, 31 and 41 and requests that the State party provide detailed information in its next periodic report on the specific measures taken to implement them.**

Preparation of the next report

50. **The Committee recommends that the State party should submit its twenty-fourth and twenty-fifth periodic reports, combined into a single document, by 29 October 2022, taking into account the treaty-specific guidelines on reporting adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all the points raised in these concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.**